



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.2073 of 2017

and

C.M.P(MD) No.10305 of 2017

U.M.K.Pasha ... Petitioner/Defendant

Vs.

Faridha Begum ... Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to call for the entire records and to strike off the suit in O.S.No.283 of 2010 on the file of the Principal Subordinate Court, Madurai.

For Petitioner : Mr.Mohamed Athiff
for Mr/V.Nirmal Kumar

For Respondent : Mr.Chellapandian
Senior Counsel
for Mr.S.Ghouse Yacoob Hussain

ORDER

The defendant has invoked the superintending jurisdiction of this Court under Article 227 of the Constitution of India to strike off the suit in O.S.No.283 of 2010. The ground on which the suit is sought to be struck off is that the relief claimed for squarely falls within the jurisdiction of the Wakf Tribunal as prescribed in Section 83 of the Wakf Act.

2.In order to appreciate the contention made by the petitioner, it is necessary to briefly allude to the facts which have culminated in filing of the above suit:-

(i) The revision petitioner who is the father of the respondent/plaintiff had executed a settlement deed dated 14.05.2008 in favour of his daughter, the respondent herein. Under the terms of this settlement deed, he had conferred the right on the respondent to be Muthawalli of the trust and consequently conferred the right of management of the trust upon her by reason of her being nominated as Muthawalli. Besides this, the respondent was also conferred with the right to enter into the lease deed with the



lessees in respect of the property, induct new tenants, carry out the repair work of the said building, construct new buildings, fix the rents and pay the outgoings in respect of the property, etc. The settlement deed also provided that the shops, house and other buildings in the schedule of properties had been handed over to the respondent and the same has also been accepted by her. The settlement deed clearly provided that the settlor could not revoke the settlement deed. However contrary to the prohibition, the settlor, namely, the revision petitioner herein had unilaterally cancelled the settlement deed, by cancellation deed, dated 07.04.2010. The settlement deed was originally executed stating that the settlor was not keeping good health. In the cancellation deed, the revision petitioner would submit that he was in good health and therefore there was no necessity to hand over the Muthawalliship and that he would continue to act as Muthawalli and manage and administer the trust. On coming to know about the cancellation the respondent herein had filed the suit in O.S.No.283 of 2010 for the following relief:-

a) *declaring that the cancellation deed dated 07.04.2010 bearing document No.2069/2010 executed by the defendant cancelling the private settlement wakf deed dated 14.05.2008 as null and void and not binding on the plaintiff*

b) *granting an order of permanent injunction restraining the defendant, his men, agents, servants and persons claiming through them from in any way interfering with the plaintiff's management of the private wakf under the name and style "Rasullalalla Pathiya Wakf Trust" as per the private wakf settlement deed dated 14.05.2008*

c) *directing the defendants to pay the costs of the suit*

(ii) The revision petitioner had filed a written statement *inter alia* contending that in the year 2008, he had been seriously ill and bedridden and since there was no male member to collect the rents and do the activities of the Wakf, he had executed a settlement deed in favour of the plaintiff on the advice of the son-in-law. Thereafter, he had recovered and he came to know that the plaintiff was treating the suit property as her own and dealing with it in the manner she likes. When the same was questioned, the revision petitioner did not receive a satisfactory response from the respondent and therefore, he had proceeded to cancel the settlement deed and this was also on account of the fact that the respondent had nominated her husband as her power agent and he had been accused in a financial fraud case. The revision petitioner has further stated that after cancelling the deed, he had executed another deed in favour of the of his youngest daughter, Yasmine Begum.



(iii) It appears that the revision petitioner had thereafter taken out an application for receiving an additional written statement containing the counter claim. In the additional written statement, the revision petitioner had stated that an injunction should be granted restraining the plaintiff (the respondent herein) from interfering with the peaceful possession administration and management of the private wakf under the name and style of Rasullalall Pathiya Wakf Trust, including the collection of rent from the tenants. The respondent herein had questioned the maintainability of the suit by filing I.A.No.46 of 2013 and had sought to have the same taken up as a preliminary issue by filing a petition in I.A.No.339 of 2013. Ultimately, the learned Principal Subordinate Judge, Madurai, by an order, dated 19.06.2014, had allowed the application filed by the revision petitioner for filing an additional written statement with the counter claim. This order was challenged in C.R.P(MD)No.1409 of 2014 by the plaintiff. By an order, dated 08.03.2017, this Court found the order of the trial court was erroneous and consequently, allowed the revision petition and the counter claim was dismissed.

(iv) Meanwhile, the respondent had challenged the unilateral cancellation of the settlement deed, by filing WP(MD)No.10679 of 2014. In the said writ petition, the revision petitioner has taken out an objection questioning the very maintainability of the writ petition on the ground that the question as to whether the cancellation of the settlement deed, should be decided by the civil Court, where the petitioner had already filed the suit and not by way of this writ petition. Ultimately, this Court has dismissed the writ petition stating that it is for the civil Court to pass orders. Thereafter, the respondent herein had filed an application for impleading the Wakf Board as second defendant in I.A.No.532 of 2014. In the affidavit filed in support of the said petition, the respondent had stated that in the writ petition she has taken out the defence that the wakf was the private wakf called Wakf-alal-aulad and being the private wakf was out side the purview of Section 3 of the Wakf Act and therefore, a bar of jurisdiction of civil Court under Section 85 of the Wakf Act would not apply. The suit was posted for trial and at this juncture, the petition to strike off the suit, has been filed by the revision petitioner herein.

3.The main arguments of Mr.Mohamed Athiff, learned counsel appearing for the revision petitioner is that the relief sought for in the plaint is one touching upon the administration and management of the wakf, which squarely comes within the provisions of Section 83 of the Wakf Act and that apart Section 83(5) of the Wakf Act provides that the Wakf Tribunal can exercise all powers as provided in the Code of Civil Procedure. Therefore, the question of declaration can also be considered by the trial Court.



4.The learned counsel for the respondent / plaintiff would submit that after participating in the proceedings fully by filing a counter claim and also by taking out the plea in the writ petition proceedings that the matter is sub-judice before the civil Court, the revision petitioner/ defendant cannot, now at the stage of trial, state that the plaint has to be struck off.

5.Heard the learned counsels appearing on either side and perused the records.

6.I am inclined to accept the arguments made by the learned counsel appearing for the respondent/plaintiff. Admittedly, the revision petitioner had participated fully in the suit by filing a counter claim and participating in the enquiry in the interlocutory application filed for allowing the counter claim. It is an admitted fact that the present petition has been filed at the stage of trial.

7.In the light of the above and taking into account the fact that since the suit has progressed right upto the stage of evidence, no useful purpose would be now served, if the suit is struck off at this stage, more particularly, when the revision petitioner himself has submitted to the jurisdiction of the civil Court.

8.In the result, this civil revision petition is dismissed and the suit, which is of the year 2016 and which is at the stage of evidence, is directed to be disposed of on or before 30.06.2022. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:-

The Principal Subordinate Judge,
Madurai.

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+3 CC to M/s.S.GHOUSE YACOOB HUSSAIN, Advocate (SR-1623[F] dated
12/01/2022)

C.R.P (MD) No.2073 of 2017
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nsn (CO)

TR(14.02.2022) 5P 5C